



DEVELOPMENT SERVICES

BUILDING | HISTORIC PRESERVATION | PLANNING & ZONING

BOARD OF ADJUSTMENT STAFF REPORT

612 SE 3rd Avenue

Meeting	File No.	Application Type
May 1, 2025	2025-070-VAR-BOA	Variance
Property Owner	Applicant / Authorized Agent	
Garrett Bender	Michael Weiner, Sachs Sax Caplan	

Request

Consideration of a variance request from Land Development Regulation (LDR) Section 4.6.15(G)(1)(a), Swimming Pool, Whirlpools, and Spas: Yard Encroachment, to reduce the rear setback to eight feet, whereas a minimum of 10 feet is required, associated with the construction of a new swimming pool.

General Data

Location: 612 SE 3rd Avenue

PCN: 12-43-46-21-01-007-0240

Property Size: 0.15Acres (6,534 SF)

Land Use Designation: Low Density (LD)

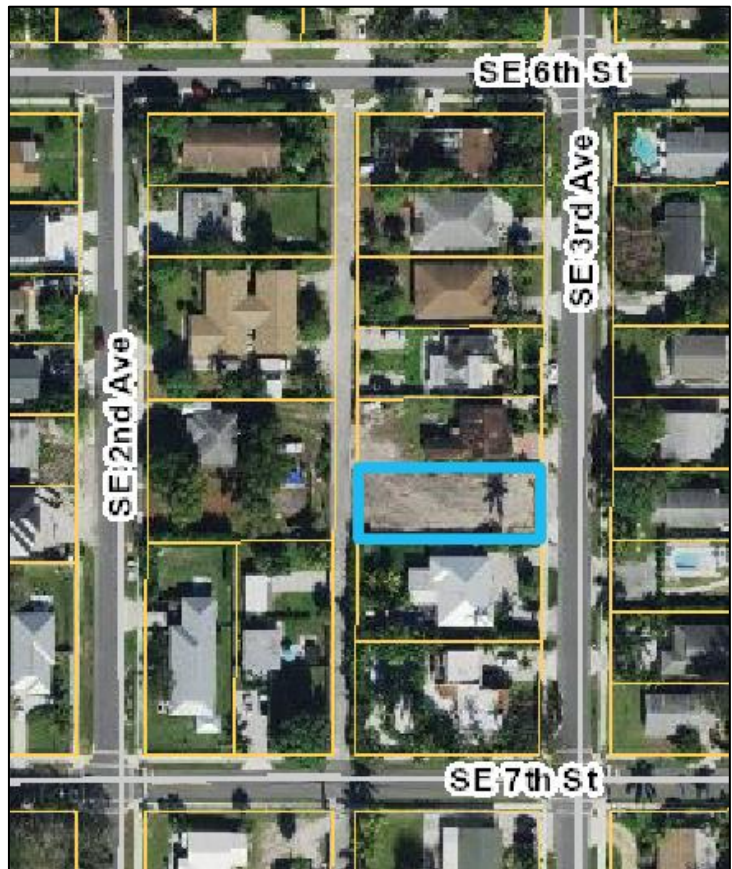
Zoning District: Single Family Residential District (R-1-A)

Existing Land Use: Single Family Home

Adjacent Zoning and Uses:

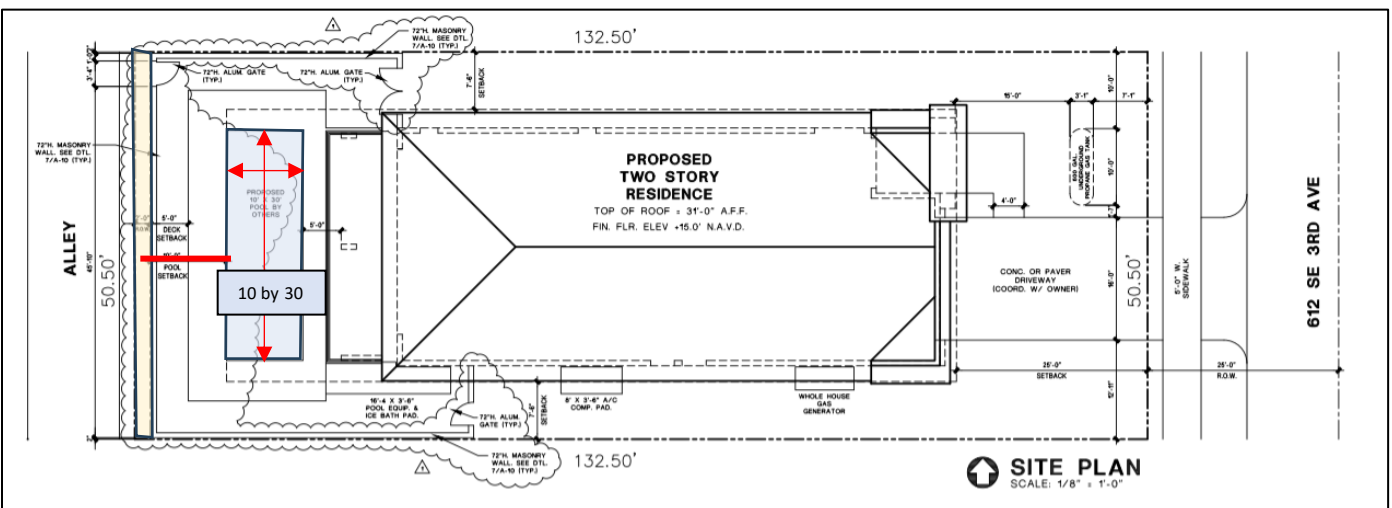
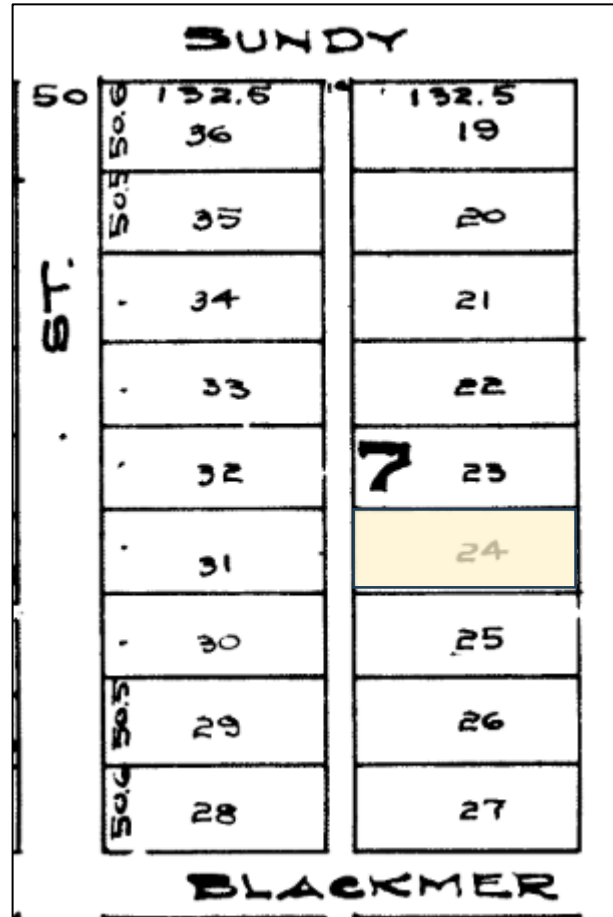
- North, South, East, and West: R-1A Single Family Residence

Legal Description: Lot 24, Block 7, Osceola Park, according to the plat thereof, in the Office of the Clerk of the Circuit Court in and for Palm Beach County, Florida, recorded in Plat Book, page 2, said lands situate, lying and being in Palm Beach County, Florida.



In 2023, a permit (23-215711) was approved for the construction of a two-story single-family home. A two-foot dedication for the improved rear alleyway was required pursuant to LDR Section 5.3.1(A) ***Right-of-way Dimensions and Dedication required***, Right-of-way dimensions and dedications, whether public or private, shall be consistent with Table MBL-1 "Street Network and Classification and Improvements" of the Mobility Element. Per Table MBL-1, the ultimate right-of-way for alleys is 20 feet. The alley is currently 16 feet wide thus requiring a two-foot dedication as the applicant is responsible for providing one-half of the ultimate right-of-way or such portion of the ultimate right-of-way which is yet undedicated, and which is on that development's side of the ultimate right-of-way center line.

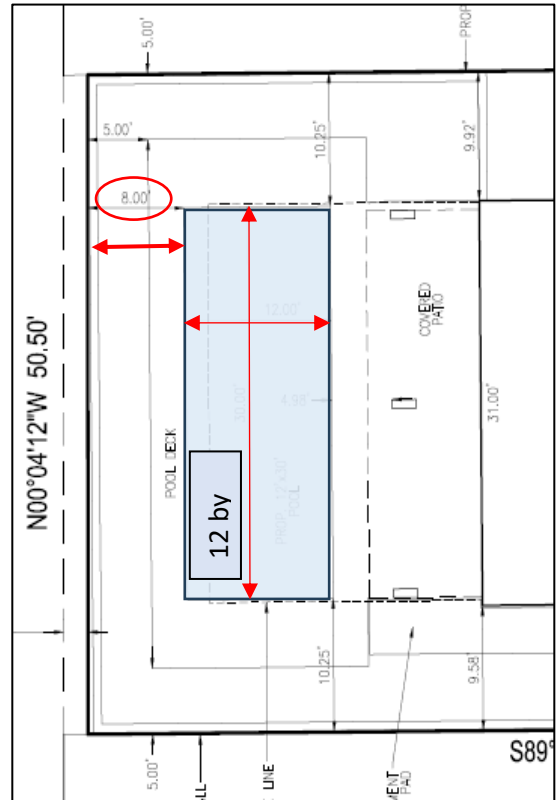
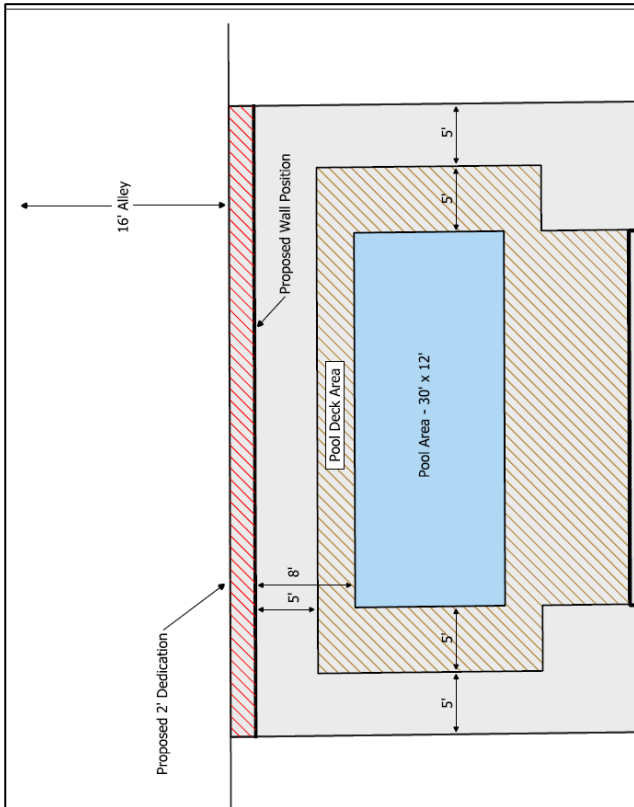
the required setbacks and open space for the zoning district are met. Below is the submitted and approved site plan for the construction of the single-family residence. The site plan includes the two-foot dedication along the alley and a diagram of a proposed pool (under separate permit) that measures 10 feet by 30 feet. This site plan demonstrates that all the setback requirements including the construction of a pool for the R-1-A zoning district are met.



Request

LDR Section 4.6.15(G)(1)(a), *Swimming pool, whirlpools, and spas may extend into the rear, interior or street side setback areas but no closer than ten feet to any property line.* The request is to reduce the rear setback from 10 feet to eight feet to construct a swimming pool that measures 12 feet by 30 feet.

The applicant's justification statement for the request is included as an attachment.



Variance Review and Analysis

Pursuant to **LDR Section 2.1.7(E)(1)(c)(3)**, **Board of Adjustment: Duties, powers, and responsibility**, *Supplemental District Regulations, Article 4.6, for single-family or duplex uses, unless otherwise stated, except where said authority is expressly prohibited, granted to others, or relief is available through another process.*

The requested relief is from a requirement in Article 4.6 – Section 4.6.15(G)(1), *Swimming pool, whirlpools, and spas: Yard Encroachment, states, “swimming pools shall not extend into the front setback area noted in Section 4.3.4(K).”*

Pursuant to **LDR Section 2.4.11(A)(5)(a-f)**, **Variance Findings**, the following findings must be made prior to the approval of a variance:

- (a) *That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not generally applicable to other lands, structures, or buildings subject to the same zoning (The matter of economic hardship shall not constitute a basis for the granting of a variance);*
- (b) *That literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning;*
- (c) *That the special conditions and circumstances have not resulted from actions of the applicant;*

- (d) *That granting the variance will not confer onto the applicant any special privilege that is denied to other lands, structures, and buildings under the same zoning. Neither the permitted, nor nonconforming use, of neighborhood lands, structures, or buildings under the same zoning shall be considered grounds for the issuance of a variance;*
- (e) *That the reasons set forth in the variance petition justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building, or structure; and,*
- (f) *That the granting of the variance will be in harmony with the general purpose and intent of existing regulations, will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.*

Pursuant to LDR Section 2.4.11(A) Relief, Variances, is a departure from the dimensional or numeric requirements of the land development regulations where such variance will not be contrary to the public interest and where owing to the existing conditions peculiar to the property and not the result of the actions of the landowner, a literal enforcement of the regulations would result in unnecessary and undue hardship. There are six findings listed above that must be found in the positive to only the subject property. While variances are applied city-wide, each request should be reviewed separately and only for the request that is presently being made. There must be special circumstances or uniqueness to the subject property. Consideration should be made if the action of the request is a result of the applicant.

While the subject property does not meet the frontage of 60 feet in the R-1-A zoning district, it does exceed the requirement of 100 feet for the depth of the lot. The Board should consider whether there are special conditions or circumstances relative to the subject property. **Section 4.6.15(G)(1)(a), Yard Encroachment:** *Swimming pools may extend into the rear, interior or street side setback areas but no closer than ten feet to any property line.* The Board should consider if the pool encroachment of two feet into the rear setback will not confer onto the applicant any special privilege. The intent of the pool setback requirement is to not fringe upon the neighboring properties and to maintain a uniformity in the streetscape within residential neighborhoods. The alley that abuts the property is a paved alley that is used to gain access to properties from the rear as well as a throughfare for traveling vehicles.



While the applicant by right may request for relief to maximize the use of the subject property, the board should consider the circumstances of the need for the variance. Does the variance petition justify that the granting of the variance is the minimum variance that will make possible the reasonable use of the land, is not the result of actions by the applicant, and if the literal interpretation of the regulations would deprive the applicant of rights commonly enjoyed by other properties subject to the same zoning.

The subject property is a newly constructed single-family residence. The submitted site plan (above) demonstrates that a swimming pool could be constructed without relief. The board shall consider whether a larger swimming pool is appropriate for the size lot and the surrounding neighborhood. A minimum of 25% open space is required in the R-1-A zoning district which is maintained with the request.

The Neighborhoods, Districts and Corridors Element of the Always Delray Comprehensive Plan Objective NDC 2.2 Downtown and Surrounding Neighborhoods is “Protect and enhance the “Village by the Sea” character of the downtown and neighborhoods located east of I-95. According to the 2019 Osceola Redevelopment Plan, Osceola Park is one of Delray Beach’s first planned neighborhoods on the grid system and nearly half of the single-family homes are at least 40 years old, although the demolition of

these single-family residences and new construction is becoming more popular, consideration should be given to the well-established neighborhood and if granting the variance for a two foot rear reduction to construct a swimming pool is not anticipated to conflict with or be detrimental to the surrounding area.

Optional Board Actions

- A. Move **approval** of the Variance request for **612 SE 3rd Avenue** (2025-070 VAR-BOA) from LDR Section 4.6.15(G)(1) to reduce the rear setback to eight feet, whereas a minimum of 10 feet is required, associated with the construction of a new swimming pool, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f),
- B. Move **denial** of the Variance request for **612 SE 3rd Avenue** (2025-070 VAR-BOA) from LDR Section 4.6.15(G)(1) to reduce the rear setback to eight feet, whereas a minimum of 10 feet is required, associated with the construction of a new swimming pool, by finding that the request is consistent with the findings set forth in LDR Section 2.4.11(A)(5)(a-f),
- C. Move to **continue with direction**

Public Notice

Pursuant to **LDR Section 2.6.3(G)**, Notice in accordance with Section 2.6.2 (A), (B), (C), and (D) shall be provided prior to a Public Hearing.

LDR section	Date Posted
26.2 (A); Written notice provided to property owners within 500 feet	April 18, 2025
2.6.2 (B); Property posted placard on subject property	April 18, 2025
2.6.2 (C); Notice posted at City Hall	April 23, 2025
2.6.2(D); Notice posted on City Web Page	April 23, 2025

Technical Review of Comments (TAC) Timeline

Review No.	Submittal Date	TAC Comments Transmitted
1	12/2/2024	12/6/2024
2	12/11/2024	12/12/2024
3	1/3/2025	1/3/2025
4	1/7/2025	1/7/2025
5	1/9/2025	1/9/2025